

SEP 17 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY ROSS WHITE,

Petitioner - Appellant,

v.

MATTHEW CATE,* Secretary of the
California Department of Corrections;
MARGARITA E. PEREZ, Chairperson,
California Board of Prison Terms,

Respondents - Appellees.

No. 06-56174

D.C. No. CV-04-05968-SJO

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Argued and Submitted May 7, 2008
Pasadena, California

Submission withdrawn May 23, 2008
Resubmitted September 9, 2010

*Matthew Cate, Secretary of the California Department of Corrections, is substituted for his predecessor, J.S. Woodford, Warden. Fed. R. App. P. 43(c)(2).

**This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: FISHER and BERZON, Circuit Judges, and ROBART, District Judge.***

Gregory Ross White appeals from the judgment of the district court dismissing his 28 U.S.C. § 2254 habeas corpus petition challenging the 1996 rescission of parole. We dismiss the appeal as moot.

White filed his habeas petition on July 22, 2004, while he was incarcerated by the State of California at the Oregon State Penitentiary in Salem, Oregon. In his petition, White sought an order vacating his 1996 parole rescission order, reinstating his parole date and requiring the Department of Corrections to release him from prison “in accordance with the terms of his parole.” Supplement Pet. Habeas Corpus 13. On January 22, 2010, while this appeal was pending, White was released on parole. White has, accordingly, been granted the relief he sought in his habeas petition. This renders his appeal moot. *See Munoz v. Rowland*, 104 F.3d 1096, 1097-98 (9th Cir. 1997) (“We are precluded by Article III of the Constitution . . . from entertaining an appeal if there is no longer a live case or controversy.”).

In his supplemental brief, White argues that his case is not moot because this court could order his discharge from parole. *Cf. McQuillion v. Duncan*, 342 F.3d 1012, 1015 (9th Cir. 2003). White, however, raises this claim for relief for the first

***The Honorable James L. Robart, United States District Judge for the Western District of Washington, sitting by designation.

time in his supplemental brief on appeal. We therefore treat this argument as waived. *See Allen v. Ornoski*, 435 F.3d 946, 960 (9th Cir. 2006).

APPEAL DISMISSED.